

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

DANIEL QUEKEMEYER,

*

Plaintiff,

*

v.

Civil Action No.

*

EFinancial, LLC,

**PLAINTIFF DEMANDS TRIAL
BY STRUCK JURY.**

*

Defendant.

*

COMPLAINT

This case arises from the intentional and repeated efforts of Defendant to market its services in plain violation of the Telephone Consumer Protection Act, 47 U.S.C. §227 et seq. (hereinafter referred to as the “TCPA”) by utilizing an “automatic telephone dialing system,” as defined by 47 U.S.C. §227(a)(1), after Plaintiff had revoked the prior express written consent to receive such telemarketing calls, and Defendant acknowledged such revocation. Due to the intentional actions of Defendant, Plaintiff, by and through undersigned counsel, now comes to this Honorable Court seeking injunctive relief, a judgment against Defendant in an amount equal to the statutory damages set forth in the TCPA, the costs incurred in this action, and for such other, further and different relief to which Plaintiff may be entitled under the circumstances. As more specific grounds therefore, Plaintiff offers unto this Honorable Court as follows:

I.

PARTIES

PLAINTIFF

1. Plaintiff, Daniel Quekemeyer (herein after referred to as “Plaintiff”), is a natural person who is a resident of Shelby County, Alabama, and is in excess of 19 years of age.

2. Plaintiff is, and at all relevant times was, a “person” as that term is defined by 47 U.S.C. §153(39).

DEFENDANT

3. Defendant, EFinancial, LLC (herein after referred to as “Defendant”), is a foreign corporation incorporated in Washington, with its principal place of business in Bellevue, Washington. Defendant does business in Alabama.

4. Defendant is, and at all relevant times was, a “person” as that term is defined by 47 U.S.C. §153(39).

II.

JURISDICTION AND VENUE

5. This action is brought under Federal Law; thus the Court has Federal Question jurisdiction pursuant to 47 U.S.C. §227 *et seq.* Further, this action is brought due to actions Defendant, a foreign corporation that does business in

Alabama, took against Plaintiff, a resident of Alabama, and the amount in controversy exceeds the minimum jurisdictional limits of this Court.

6. Venue is proper in this Court because Defendant carried out the acts complained of by Plaintiff in Shelby County, Alabama. At all relevant times, Defendant placed calls to Plaintiff in Shelby County, Alabama.

III.

THE TELEPHONE CONSUMER PROTECTION ACT OF 1991 (TCPA), 47 U.S.C. §227

7. Plaintiff incorporates and realleges each and every allegation set forth above and incorporates the same herein by reference.

8. In 1991, Congress enacted the TCPA¹ in response to a growing number of consumer complaints regarding certain telemarketing practices.

9. The TCPA regulates, among other things, the use of automatic telephone dialing systems (hereinafter referred to as an “ATDS”), or “autodialers.”

10. Specifically, the plain language of §227 (b)(1)(A)(iii) prohibits the use of an ATDS to make any call to a wireless number, other than a call made for emergency purposes, in the absence of prior express consent.

11. According to findings by the FCC, the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited

¹ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), codified at 47 U.S.C. §227 (TCPA). The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. §201 *et seq.*

because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient.

12. On January 4, 2008, the FCC released a Declaratory Ruling wherein it confirmed that autodialed and prerecorded messages to a wireless number are permitted only if the calls are made with the “prior express consent” of the called party.² Further, regulations effective October 16, 2013, require that “prior express *written* consent” be obtained before placing telemarketing calls to cellular telephones using an automatic telephone dialing system (ATDS). 47 C.F.R. §64.1200(a)(2), *emphasis added*.

13. Just as a consumer may grant his consent to receive telemarketing calls placed by an ATDS to a cellular telephone, so may a consumer revoke such consent.

14. The TCPA provides a private right of action for violations whereby an aggrieved party may be awarded, in addition to injunctive relief, the greater of actual damages or statutory damages in the amount of \$500 for each violation (and up-to \$1,500 for each call placed in violation of the statute intentionally, willfully and/or knowingly).

² *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (“FCC Declaratory Ruling”),* 23 F.C.C.R. 559, 23 FCC Rcd. 559, 564-65 (¶ 10), 43 Communications Reg. (P&F) 877, 2008 WL 65485 (F.C.C.) (2008).

IV.

PLAINTIFF'S FACTUAL ALLEGATIONS

AND CAUSE OF ACTION FOR VIOLATIONS OF THE TCPA

15. Plaintiff incorporates and realleges each and every allegation set forth above and incorporates the same herein by reference.

16. Plaintiff has a cellular telephone number that he has used for many years. Plaintiff has only used this number as a cellular telephone number, and Plaintiff's cellular number has not been ported from a wireline service.

17. Plaintiff, on or about November 10, 2013, submitted his name, address, and his cell phone number to www.usinsuranceonline.com.

18. To the best of Plaintiff's recollection, knowledge, and information, at the time he submitted his name, address and cell phone number, www.usinsuranceonline.com provided the following disclosure:

By clicking "Get My Quotes" I provide my signature, expressly authorizing up to eight insurance companies³ or their agents or partner companies to contact me at the number and address provided with insurance quotes or to obtain additional information for such purpose, via live, prerecorded or

³ Defendant is not listed as one of the insurance companies in the link imbedded in the subject disclosure. The insurance companies disclosed by www.usinsuranceonline.com are: 21st Century Insurance, AAA Insurance Co., Allied, Allstate Insurance, American Family Insurance, American National Insurance, Amica Insurance, Answer Financial, Cotton States Insurance, Country Financial, Erie Insurance Company, Esurance, Farm Bureau, Farmers Insurance, GEICO, GMAC Insurance, Infinity Insurance, Liberty Mutual Insurance Company, Mercury, Metropolitan Insurance Co., Nationwide, Progressive Insurance, QuoteWhiz, LLC, Sentry Insurance Company, SAFECO, Shelter Insurance Company, State Farm, The Hartford, The Hartford AARP, Travelers Insurance Company, Unitrin Direct, USAA, USInsuranceOnline.

autodialed calls, text messages or email. I understand that my signature is not a condition of purchasing any property, goods or services and that I may revoke my consent at any time.

19. Upon information and belief, www.usinsuranceonline.com provided Plaintiff's contact information to Defendant.

20. Defendant, on or about November 22, 2013, began placing calls to Plaintiff's cellular number. Plaintiff's caller-id indicated that the call was placed from (866) 509-5045.

21. As evidenced by the tell-tale pause before an operator begins to speak, the telephone calls placed to Plaintiff's cellular telephone were made by Defendant using an ATDS, as defined in 47 U.S.C. §227(a)(1). The factual allegations of this paragraph are likely to have more evidentiary support after Plaintiff has been granted a reasonable opportunity to conduct further investigation and discovery.

22. The telephone calls placed to Plaintiff's cellular telephone were not made for "emergency purposes," as defined in 47 C.F.R. §64.1200.

23. The telephone calls placed to Plaintiff's cellular telephone were made by Defendant (using an ATDS) as a "telemarketing call" or "telephone solicitation," as defined in 47 U.S.C. § 227(a)(4).

24. After receiving autodialed telemarketing calls to his cellular telephone from Defendant nine (9) times in six (6) days, Plaintiff, on Wednesday, November 27, 2013 12:39 p.m., contacted Defendant via email and revoked his consent for

his cellular telephone to be contacted by Defendant using an ATDS for purposes of telephone solicitation. Specifically, Defendant stated:

To whom it may concern.

I am receiving multiple calls a day and have received as many as 5 calls per day. I do not receive any voicemails associated with the calls so I do not know why I am receiving calls from your company.

Calls date and times:

11/22 1:12 PM

11/25 10:22 AM, 12:44 PM, 3:56 PM

11/27 8:50 AM, 10:13 AM, 10:57 AM, 1:13 PM, 2:11 PM (as of the time of this email 2:28 PM)

This is an official written request to **do not call** this number (Plaintiff's cell number redacted) anymore. I am not interested in your product and if, at one time, I was interested I am certainly not interested any longer. I certainly would not patronize a company that treats potential customers with such disrespect.

If I continue to receive calls after tomorrow I will file a complaint with my state attorney.

Daniel

25. Plaintiff's request was acknowledged by Defendant on Monday, December 2, 2013 at 12:37 p.m. by Kathleen Rowell, Defendant's Vice President - Operations. Further, Ms. Rowell informed Plaintiff that his name had been added to Defendant's Do-Not-Call List.

26. Despite Plaintiff's revocation of consent for his cellular telephone to be contacted by Defendant using an ATDS for purposes of telephone solicitation, and Defendant's specific acknowledgment of Plaintiff's revocation, Defendant has continued to place telemarketing calls to Plaintiff's cellular telephone using an ATDS.

27. All of the 183 telemarketing calls placed to Plaintiff's cellular telephone using an ATDS since Monday, December 2, 2013 at 12:37 p.m. (the date and time Defendant acknowledged Plaintiff's revocation) have been made intentionally, without Plaintiff's prior express written consent, and in plain violation of the TCPA. Specifically, Defendant placed telemarketing calls to Plaintiff's cellular telephone number on the following dates and times:

Calls since stop request	Date	Number	Time
1	3-Dec	8665095045	14:14
2	4-Dec	8665095045	9:19
3		8665095045	10:21
4		8665095045	12:25
5		8665095045	14:24
6		8665095045	15:50
7		8665095045	16:31
8	5-Dec	8665095045	8:43
9		8665095045	10:36
10		8665095045	10:46
11		8665095045	11:15
12	6-Dec	8665095045	16:51
13	10-Dec	8665095045	13:02

14		8665095045	14:03
15		8665095045	14:26
16		8665095045	14:29
17		8665095045	15:00
18		8665095045	15:46
19		8665095045	15:50
20		8665095045	16:19
21		8665095045	16:26
22	11-Dec	8665095045	8:03
23		8665095045	8:07
24		8665095045	8:22
25		8665095045	9:10
26		8665095045	9:14
27		8665095045	9:28
28		8665095045	10:21
29		8665095045	10:25
30		8665095045	11:07
31		8665095045	11:12
32		8665095045	13:32
33		8665095045	13:48
34	12-Dec	8665095045	8:29
35		8665095045	8:34
36		8665095045	9:18
37		8665095045	9:35
38		8665095045	10:29
39		8665095045	10:53
40		8665095045	12:04
41		8665095045	14:03
42		8665095045	14:08
43		8665095045	14:54
44		8665095045	14:59
45		8665095045	15:36
46		8665095045	16:02
47	13-Dec	8665095045	8:08
48		8665095045	8:33
49		8665095045	8:47
50		8665095045	9:26
51		8665095045	9:40
52		8665095045	10:31

53		8665095045	10:46
54		8665095045	11:13
55		8665095045	11:45
56		8665095045	12:41
57		8665095045	13:06
58		8665095045	14:08
59		8665095045	14:23
60		8665095045	15:57
61		8665095045	16:17
62	16-Dec	8665095045	8:35
63		8665095045	9:25
64		8665095045	9:31
65		8665095045	11:14
66		8665095045	11:37
67		8665095045	13:21
68		8665095045	13:25
69		8665095045	14:36
70		8665095045	14:40
71		8665095045	17:26
72		8665095045	17:17
73	17-Dec	8665095045	8:25
74		8665095045	8:19
75		8665095045	10:57
76		8665095045	11:01
77		8665095045	13:05
78		8665095045	13:10
79		8665095045	14:21
80		8665095045	14:24
81		8665095045	16:32
82		8665095045	18:42
83		8665095045	18:49
84	18-Dec	8665095045	8:23
85		8665095045	9:11
86		8665095045	10:47
87		8665095045	11:33
88		8665095045	13:52
89		8665095045	13:56
90		8665095045	15:41
91		8665095045	15:45

92		8665095045	17:00
93	19-Dec	8665095045	8:15
94		8665095045	8:20
95		8665095045	10:32
96		8665095045	10:37
97		8665095045	11:49
98		8665095045	11:51
99		8665095045	12:33
100		8665095045	13:55
101		8665095045	14:59
102		8665095045	15:00
103		8665095045	15:08
104		8665095045	15:47
105		8665095045	19:09
106		8665095045	19:14
107		8665095045	19:29
108	20-Dec	8665095045	8:21
109		8665095045	9:22
110		8665095045	9:25
111		8665095045	11:12
112		8665095045	11:15
113		8665095045	12:56
114		8665095045	14:20
115		8665095045	15:44
116		8665095045	15:48
117	23-Dec	8665095045	8:02
118		8665095045	8:09
119		8665095045	8:33
120		8665095045	8:40
121		8665095045	8:45
122		8665095045	12:29
123		8665095045	13:57
124		8665095045	14:38
125		8665095045	14:59
126		8665095045	15:21
127		8665095045	15:25
128		8665095045	15:43
129		8665095045	15:56
130		8665095045	16:09

131		8665095045	16:11
132		8665095045	16:21
133		8665095045	16:28
134		8665095045	19:51
135		8665095045	19:56
136	26-Dec	8665095045	9:46
137		8665095045	11:32
138		8665095045	12:58
139		8665095045	12:58
140		8665095045	13:17
141		8665095045	16:01
142		8665095045	16:04
143		8665095045	17:09
144		8665095045	17:13
145		8665095045	19:03
146		8665095045	19:07
147	27-Dec	8665095045	8:32
148		8665095045	8:34
149		8665095045	9:32
150		8665095045	9:48
151		8665095045	15:34
152		8665095045	16:06
153		8665095045	16:44
154	30-Dec	8665095045	8:58
155		8665095045	12:40
156		8665095045	12:44
157		8665095045	14:27
158		8665095045	14:29
159		8665095045	16:42
160		8665095045	19:09
161	2-Jan	8665095045	8:00
162		8665095045	8:35
163		8665095045	9:43
164		8665095045	11:37
165		8665095045	13:09
166		8665095045	14:11
167		8665095045	15:15
168		8665095045	15:20
169		8665095045	17:04

170		8665095045	17:09
171	3-Jan	8665095045	8:31
172		8665095045	8:47
173		8665095045	9:18
174		8665095045	10:51
175		8665095045	11:58
176	6-Jan	8665095045	8:58
177		8665095045	19:15
178	9-Jan	8665095045	9:45
179		8665095045	11:31
180		8665095045	13:13
181		8665095045	19:11
182	10-Jan	8665095045	11:13
183		8665095045	13:51

28. As a result of Defendant's conduct in violation of the TCPA, Plaintiff is entitled to an award of minimum statutory damages of \$500.00 for each of the 183 telemarketing calls placed to Plaintiff's cellular telephone using an ATDS since Monday, December 2, 2013 at 12:37 p.m. (the date and time Defendant acknowledged Plaintiff's revocation).

29. Further, because each of the 183 telemarketing calls placed to Plaintiff's cellular telephone using an ATDS since Monday, December 2, 2013 at 12:37 p.m. (the date and time Defendant acknowledged Plaintiff's revocation) were made intentionally, willfully and/or knowingly by Defendant, an award of statutory damages of may be increased to as much as \$1,500.00 for each of the subject 183 telemarketing calls.

30. Finally, Plaintiff is entitled to injunctive relief to prohibit further telemarketing calls being placed to his cellular telephone by Defendant using an ATDS.

WHEREFORE, the premises considered, Plaintiff prays that this Honorable Court permanently enjoin Defendant from placing telemarketing calls to Plaintiff's cellular telephone using an ATDS in violation of the TCPA, and enter judgment finding Defendant liable to Plaintiff for statutory damages, in accordance with 47 U.S.C. § 227(b)(3), in the amount of \$500.00 to \$1,500.00 for each telemarketing call placed to Plaintiff's cellular telephone by Defendant in violation of the TCPA, plus the costs incurred in this action; and for such other, further, and different relief to which Plaintiff may be entitled and that this Honorable Court may deem just and proper.

V.

JURY DEMAND

Due to the intentional and premeditated actions of Defendant, Plaintiff has come to this Honorable Court and demanded judgment against Defendant in an amount in excess of the minimum jurisdictional limits of this Court, plus interest, the costs incurred in this action, and for such other, further, and different relief to which Plaintiff may be entitled and that this Honorable Court may deem just and proper. In order to fairly determine the validity of the facts set forth herein and

determine the amounts due Plaintiff from Defendant, Plaintiff hereby **DEMANDS TRIAL BY STRUCK JURY.**

Respectfully submitted,



John G. Watts (ASB-5819-t82j)
M. Stan Herring (ASB-1074-n72m)
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PLAINTIFF DEMANDS A TRIAL BY JURY IN THIS CAUSE



Attorney for Plaintiff

Defendant to be served via certified mail as follows:

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